

APPENDIX A

TITLE 30-A, CHAPTER 187

PLANNING AND LAND USE REGULATION

TITLE 30-A

Chapter 187: PLANNING AND LAND USE REGULATION

Subchapter 1: GENERAL PROVISIONS

§4301. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Affordable housing. "Affordable housing" means a decent, safe and sanitary dwelling, apartment or other living accommodation for a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 412, 50 Stat. 888, Section 8, as amended.

1-A. Cluster development. "Cluster development" means a form of development that allows a subdivision design in which individual lot sizes and setbacks are reduced in exchange for the creation of common open space and recreation areas, the preservation of environmentally sensitive areas, agriculture and silviculture and the reduction in the size of road and utility systems.

2. Coastal area. "Coastal area" means a coastal island and any municipality or unorganized township contiguous to tidal waters. The inland boundary of the coastal area is the inland line of any coastal town line.

3. Comprehensive plan. "Comprehensive plan" means a document or interrelated documents containing the elements established under section 4326, subsections 1 to 4, including the strategies for an implementation program which are consistent with the goals and guidelines established under subchapter II.

4. Conditional zoning. "Conditional zoning" means the process by which the municipal legislative body may rezone property to permit the use of that property subject to conditions not generally applicable to other properties similarly zoned.

4-A. Critical rural area. "Critical rural area" means a rural area that is specifically identified and designated by a municipality's or multimunicipal region's comprehensive plan as deserving maximum protection from development to preserve natural resources and related economic activities that may include, but are not limited to, significant farmland, forest land or mineral resources; high-value wildlife or fisheries habitat; scenic areas; public water supplies; scarce or especially vulnerable natural resources; and open lands functionally necessary to support a vibrant rural economy.

4-B. Critical waterfront area. "Critical waterfront area" means a shorefront area characterized by functionally water-dependent uses, as defined in Title 38, section 436-A, subsection 6, and specifically identified and designated by a municipality's or multimunicipal region's comprehensive plan as deserving maximum protection from incompatible development.

5. Contract zoning. "Contract zoning" means the process by which the property owner, in consideration of the rezoning of that person's property, agrees to the imposition of certain conditions or restrictions not imposed on other similarly zoned properties.

5-A. Downtown. "Downtown" means.

A. The central business district of a community that serves as the center for socioeconomic interaction in the community and is characterized by a cohesive core of commercial and mixed-use buildings, often interspersed with civic, religious and residential buildings and public spaces, typically arranged along a main street and intersecting side streets, walkable and served by public infrastructure; or

B. An area identified as a downtown in a comprehensive plan adopted pursuant to chapter 187, subchapter II.

5-B. Growth-related capital investment. "Growth-related capital investment" means investment by the State in only the following projects, even if privately owned, whether using state, federal or other public funds and whether in the form of a purchase, lease, grant, loan, loan guarantee, credit, tax credit or other financial assistance:

A. Construction or acquisition of newly constructed multifamily rental housing;

B. Development of industrial or business parks;

C. Construction or extension of sewer, water and other utility lines;

D. Grants and loans for public or quasi-public service infrastructure, public or quasi-public facilities and community buildings; and

E. Construction or expansion of state office buildings, state courts, hospitals and other quasi-public facilities and other civic buildings that serve public clients and customers.

"Growth-related capital investment" does not include investment in the following: the operation or maintenance of a governmental or quasi-governmental facility or program; the renovation of a governmental facility that does not significantly expand the facility's capacity; general purpose aid for education; school construction or renovation projects; highway or bridge projects; programs that provide direct financial assistance to individual businesses; community revenue sharing; or public health programs.

6. Development. "Development" means a change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

6-A. Impact fee. "Impact fee" means a charge or assessment imposed by a municipality against a new development to fund or recoup the cost of new, expanded or replacement infrastructure facilities necessitated by and attributable to the new development.

6-B. Impact fee ordinance. "Impact fee ordinance" means an ordinance that establishes the applicability, formula and means by which impact fees are assessed.

6-C. Growth area. "Growth area" means an area that is designated in a municipality's or multimunicipal region's comprehensive plan as suitable for orderly residential, commercial or industrial development, or any combinations of those types of development, and into which most development projected over 10 years is directed.

7. Implementation program. "Implementation program" means that component of a local growth management program which includes the policies and ordinances or other land use regulations which carry out the purposes and general policy statements and strategies of the comprehensive plan in a manner consistent with the goals and guidelines of subchapter II.

8. Land use ordinance. "Land use ordinance" means an ordinance or regulation of general application adopted by the municipal legislative body which controls, directs or delineates allowable uses of land and the standards for those uses.

9. Growth management program. "Growth management program" means a document containing the components described in section 4326, including the implementation program, that is consistent with the goals and guidelines established by subchapter II and that regulates land use beyond that required by Title 38, chapter 3, subchapter I, article 2-B.

10. Planning committee. "Planning committee" means the committee established by the municipal officers of a municipality or combination of municipalities that has the general responsibility established under sections 4324 and 4326.

11. Moratorium. "Moratorium" means a land use ordinance or other regulation approved by a municipal legislative body which temporarily defers development by withholding any authorization or approval necessary for development.

11-A. Multimunicipal region. "Multimunicipal region" means a region made up of 2 or more municipalities that work together to cooperatively establish a growth management program or independent growth management programs that are unified with respect to the implementation of the state goal identified in section 4312, subsection 3, paragraph A. The several municipalities in a multimunicipal region may establish the region pursuant to section 4325 or chapter 115.

12. Municipal reviewing authority. "Municipal reviewing authority" means the municipal planning board, agency or office, or if none, the municipal officers.

13. Office. "Office" means the State Planning Office.

13-A. Rate of growth ordinance. "Rate of growth ordinance" means a land use ordinance or other rule that limits the number of building or development permits issued by a municipality or other jurisdiction over a designated time frame.

14. Regional council. "Regional council" means a regional planning commission or a council of governments established under chapter 119, subchapter I.

14-A. Service center community. "Service center community" means a municipality or group of municipalities

identified by the office according to a methodology established by rule that includes 4 basic criteria, including level of retail sales, jobs-to-workers ratio, the amount of federally assisted housing and the volume of service sector jobs. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

14-B. Rural area. "Rural area" means a geographic area that is identified and designated in a municipality's or multimunicipal region's comprehensive plan as an area that is deserving of some level of regulatory protection from unrestricted development for purposes that may include, but are not limited to, supporting agriculture, forestry, mining, open space, wildlife habitat, fisheries habitat and scenic lands, and away from which most development projected over 10 years is diverted.

14-C. Transitional area. "Transitional area" means an area that is designated in a municipality's or multimunicipal region's comprehensive plan as suitable for a share of projected residential, commercial or industrial development but that is neither intended to accept the amount or density of development appropriate for a growth area nor intended to provide the level of protection for rural resources afforded in a rural area or critical rural area.

15-A. Zoning ordinance. "Zoning ordinance" means a type of land use ordinance that divides a municipality into districts and that prescribes and reasonably applies different regulations in each district.

§4302. Nuisances

Any property or use existing in violation of a municipal land use ordinance or regulation is a nuisance.

Subchapter 2: GROWTH MANAGEMENT PROGRAM

Article 1: GENERAL PROVISIONS

§4312. Statement of findings, purpose and goals

1. Legislative findings.

2. Legislative purpose. The Legislature declares that it is the purpose of this Act to:

A. Establish, in each municipality of the State, local comprehensive planning and land use management;

B. Encourage municipalities to identify the tools and resources to effectively plan for and manage future development within their jurisdictions with a maximum of local initiative and flexibility;

C. Encourage local land use ordinances, tools and policies based on local comprehensive plans;

D. Incorporate regional considerations into local planning and decision making so as to ensure consideration of regional needs and the regional impact of development;

F. Provide for continued direct state regulation of development proposals that occur in areas of statewide concern, that directly impact natural resources of statewide significance or that by their scale or nature otherwise affect vital state interests;

G. Encourage the widest possible involvement by the citizens of each municipality in all aspects of the planning and implementation process, in order to ensure that the plans developed by municipalities have had the benefit of citizen input; and

I. Encourage the development and implementation of multimunicipal growth management programs.

3. State goals. The Legislature hereby establishes a set of state goals to provide overall direction and consistency to the planning and regulatory actions of all state and municipal agencies affecting natural resource management, land use and development. The Legislature declares that, in order to promote and protect the health, safety and welfare of the citizens of the State, it is in the best interests of the State to achieve the following goals: [

A. To encourage orderly growth and development in appropriate areas of each community and region while protecting the State's rural character, making efficient use of public services and preventing development sprawl;

B. To plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development;

C. To promote an economic climate which increases job opportunities and overall economic well-being;

D. To encourage and promote affordable, decent housing opportunities for all Maine citizens;

E. To protect the quality and manage the quantity of the State's water resources, including lakes, aquifers, great

ponds, estuaries, rivers and coastal areas;

F. To protect the State's other critical natural resources, including without limitation, wetlands, wildlife and fisheries habitat, sand dunes, shorelands, scenic vistas and unique natural areas;

G. To protect the State's marine resources industry, ports and harbors from incompatible development and to promote access to the shore for commercial fishermen and the public;

H. To safeguard the State's agricultural and forest resources from development which threatens those resources;

I. To preserve the State's historic and archeological resources; and

J. To promote and protect the availability of outdoor recreation opportunities for all Maine citizens, including access to surface waters.

4. Limitation on state rule-making authority. The office is authorized to adopt rules necessary to carry out the purposes of this subchapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. This section may not be construed to grant any separate regulatory authority to any state agency beyond that necessary to implement this subchapter.

§4314. Transition; savings clause

1. Comprehensive plan. A municipal comprehensive plan adopted or amended by a municipality under former Title 30, chapter 239, subchapter 5 or 6 remains in effect until amended or repealed in accordance with the procedures, goals and guidelines established in this subchapter.

2. Shoreland and floodplain zoning ordinances. Notwithstanding section 4352, subsection 2, any portion of a zoning ordinance that is not consistent with a comprehensive plan adopted in accordance with the procedures, goals and guidelines established in this subchapter is no longer in effect 24 months after adoption of the plan unless the ordinance:

A. Does not regulate land use beyond the area required by Title 38, chapter 3, subchapter 1, article 2-B; or

B. Is adopted pursuant to and complies with the provisions of Title 38, section 440 and complies with the requirements of the Federal Flood Insurance Program.

3. Rate of growth, zoning and impact fee ordinances. After January 1, 2003, any portion of a municipality's or multimunicipal region's rate of growth, zoning or impact fee ordinance must be consistent with a comprehensive plan adopted in accordance with the procedures, goals and guidelines established in this subchapter. The portion of a rate of growth, zoning or impact fee ordinance that is not consistent with a comprehensive plan is no longer in effect unless: [2005, c. 397, Pt. A, §31 (amd).]

C. The ordinance or portion of the ordinance is exempted under subsection 2;

D. The municipality or multimunicipal region is under contract with the office to prepare a comprehensive plan or implementation program, in which case the ordinance or portion of the ordinance remains valid for up to 4 years after receipt of the first installment of its first planning assistance grant or for up to 2 years after receipt of the first installment of its first implementation assistance grant, whichever is earlier;

E. The ordinance or portion of the ordinance conflicts with a newly adopted comprehensive plan or plan amendment adopted in accordance with the procedures, goals and guidelines established in this subchapter, in which case the ordinance or portion of the ordinance remains in effect for a period of up to 24 months immediately following adoption of the comprehensive plan or plan amendment;

F. The municipality or multimunicipal region applied for and was denied financial assistance for its first planning assistance or implementation assistance grant under this subchapter due to lack of state funds on or before January 1, 2003. If the office subsequently offers the municipality or multimunicipal region its first planning assistance or implementation assistance grant, the municipality or multimunicipal region has up to one year to contract with the office to prepare a comprehensive plan or implementation program, in which case the municipality's or multimunicipal region's ordinances will be subject to paragraph D; or

G. The ordinance or portion of an ordinance is an adult entertainment establishment ordinance, as defined in section 4352, subsection 2, that has been adopted by a municipality that has not adopted a comprehensive plan.

Article 2: GROWTH MANAGEMENT PROGRAMS

§4321. Growth management program established

There is established a program of growth management to accomplish the goals of this subchapter.

§4322. Exception

This article does not apply to municipalities within the jurisdiction of the Maine Land Use Regulation Commission.

§4323. Local authority for growth management

Through the exercise of its home rule authority, subject to the express limitations and requirements of this subchapter, every municipality may:

- 1. Planning.** Plan for its future development and growth;
- 2. Growth management program.** Adopt and amend local growth management programs, including comprehensive plans and implementation programs, consistent with the procedures, goals and guidelines established in this subchapter; and
- 3. Other.** Do all other things necessary to carry out the purposes of this subchapter.

§4324. Responsibility for growth management

This section governs a municipality's or multimunicipal region's responsibility for the preparation or amendment of its growth management program. When procedures for the adoption of comprehensive plans and ordinances are governed by other provisions of this Title or municipal charter or ordinance, the municipality or multimunicipal region may modify the procedural requirements of this section as long as a broad range of opportunity for public comment and review is preserved.

1. Growth management program. Each municipality or multimunicipal region may prepare a growth management program in accordance with this section or may amend its existing comprehensive plan and existing land use ordinances to comply with the procedures, goals and guidelines established in this subchapter.

2. Planning committee. If a municipality or multimunicipal region chooses to prepare a growth management program, the municipal officers of a municipality or combination of municipalities shall designate and establish a planning committee, which may include one or more municipal officials.

A. The municipal officers may designate any existing planning board or district established under subchapter 4, or a former similar provision, as the planning committee. Planning boards established under former Title 30, section 4952, subsection 1 continue to be governed by those provisions until they are superseded by municipal charter or ordinance.

B. The planning committee may develop and maintain a comprehensive plan and may develop any portion of an implementation program to which it is assigned in an adopted comprehensive plan or otherwise directed by the municipal officers or municipal legislative body or bodies. In performing these duties, the planning committee shall:

- (1) Hold public hearings and use other methods to solicit and strongly encourage citizen input; and
- (2) Prepare the comprehensive plan or any portion of the implementation program to which it is assigned in an adopted comprehensive plan and make recommendations to the municipal legislative body regarding the adoption and implementation of the program or amended program.

3. Citizen participation. In order to encourage citizen participation in the development of a growth management program, municipalities or multimunicipal regions may adopt growth management programs only after soliciting and considering a broad range of public review and comment. The intent of this subsection is to provide for the broad dissemination of proposals and alternatives, opportunity for written comments, open discussions, information dissemination and consideration of and response to public comments.

4. Meetings to be public. The planning committee shall conduct all of its meetings in open, public session. Prior public notice must be given for all meetings of the planning committee pursuant to Title 1, section 406.

8. Public hearing required. The planning committee shall hold at least one public hearing on its proposed comprehensive plan.

A. Notice of a public hearing must be posted in each municipality at least 30 days before the hearing, except that, if a follow-up hearing is held pursuant to comments made at a public hearing, the follow-up hearing may be conducted if public notice is given pursuant to Title 1, section 406.

B. A copy of the proposed comprehensive plan must be made available for public inspection at each municipal

office or other convenient location with regular public hours at least 30 days before the hearing. If modification of the plan is proposed pursuant to comments made at a public hearing, and if a follow-up public hearing is to be held, the proposed changes must be made available for public inspection at each municipal office or other convenient location with regular public hours before any follow-up hearing.

9. Adoption. A comprehensive plan or land use ordinance is considered adopted as part of a growth management program when it has been adopted by the municipality's legislative body. A multimunicipal comprehensive plan or land use ordinance must be adopted by the municipal legislative body of each participating municipality unless another form of legislative authority has been established for this purpose within the municipality or multimunicipal region.

10. Amendments to an adopted plan. When amending an adopted comprehensive plan, a municipality or multimunicipal region shall follow the same procedures for citizen participation, public notice and public hearing that are required for adoption of a comprehensive plan.

§4325. Cooperative municipal growth management activities

This section governs cooperative growth management efforts conducted by 2 or more municipalities.

1. Within municipality. A municipality may exercise its land use planning and management authority over the total land area within its jurisdiction.

2. Multimunicipal region. Any combination of municipalities may conduct joint planning and regulatory programs to meet the requirements of this subchapter upon adoption of a written comprehensive planning and enforcement agreement by the municipal legislative bodies involved. The municipalities must agree:

- A. On procedures for joint action in the preparation and adoption of comprehensive plans, land use regulations and other implementation measures to be conducted on a multimunicipal basis;
- B. On the manner of representation on any such joint land use body; and
- C. On the amount and source of contribution from each municipality for any costs incurred in the development, implementation and enforcement of the comprehensive plan and its implementation program and on the method of distributing the benefits or impacts of regional land use, economic development, housing, transportation, infrastructure and other shared plans and programs.

3. Requirements. The comprehensive planning and enforcement agreement must be in writing, approved by the municipal legislative bodies and forwarded to the office. [2001, c. 578, §14 (amd).]

§4326. Growth management program elements

A growth management program must include at least a comprehensive plan, as described in subsections 1 to 4, and an implementation program as described in subsection 5.

1. Inventory and analysis. A comprehensive plan must include an inventory and analysis section addressing state goals under this subchapter and issues of regional or local significance that the municipality or multimunicipal region considers important. The inventory must be based on information provided by the State, regional councils and other relevant local sources. The analysis must include 10-year projections of local and regional growth in population and residential, commercial and industrial activity; the projected need for public facilities; and the vulnerability of and potential impacts on natural resources.

The inventory and analysis section must include, but is not limited to:

- A. Economic and demographic data describing the municipality or multimunicipal region and the region in which it is located;
- B. Significant water resources such as lakes, aquifers, estuaries, rivers and coastal areas and, when applicable, their vulnerability to degradation;
- C. Significant or critical natural resources, such as wetlands, wildlife and fisheries habitats, significant plant habitats, coastal islands, sand dunes, scenic areas, shorelands, heritage coastal areas as defined under Title 5, section 3316, and unique natural areas;
- D. Marine-related resources and facilities such as ports, harbors, commercial moorings, commercial docking facilities and related parking, and shell fishing and worming areas;
- E. Commercial forestry and agricultural land;

F. Existing recreation, park and open space areas and significant points of public access to shorelands within a municipality or multimunicipal region;

G. Existing transportation systems, including the capacity of existing and proposed major thoroughfares, secondary routes, pedestrian ways and parking facilities;

H. Residential housing stock, including affordable housing;

I. Historical and archeological resources including, at the discretion of the municipality or multimunicipal region, stone walls, stone impoundments and timber bridges of historical significance;

J. Land use information describing current and projected development patterns; and

K. An assessment of capital facilities and public services necessary to support growth and development and to protect the environment and health, safety and welfare of the public and the costs of those facilities and services.

2. Policy development. A comprehensive plan must include a policy development section that relates the findings contained in the inventory and analysis section to the state goals. The policies must.

A. Promote the state goals under this subchapter;

B. Address any conflicts between state goals under this subchapter;

C. Address any conflicts between regional and local issues; and

D. Address the State's coastal policies if any part of the municipality or multimunicipal region is a coastal area.

3. Implementation strategy. A comprehensive plan must include an implementation strategy section that contains a timetable for the implementation program, including land use ordinances, ensuring that the goals established under this subchapter are met. These implementation strategies must be consistent with state law and must actively promote policies developed during the planning process. The timetable must identify significant ordinances to be included in the implementation program. The strategies and timetable must guide the subsequent adoption of policies, programs and land use ordinances.

3-A. Guidelines for policy development and implementation strategies. In developing its strategies and subsequent policies, programs and land use ordinances, each municipality or multimunicipal region shall employ the following guidelines consistent with the goals of this subchapter:

A. Identify and designate geographic areas in the municipality or multimunicipal region as growth areas and rural areas, as defined in this chapter.

(1) Within growth areas, each municipality or multimunicipal region shall:

(a) Establish development standards;

(b) Establish timely permitting procedures;

(c) Ensure that needed public services are available; and

(d) Prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion.

(2) Within rural areas, each municipality or multimunicipal region shall adopt land use policies and ordinances to discourage incompatible development. These policies and ordinances may include, without limitation, density limits, cluster or special zoning, acquisition of land or development rights, transfer of development rights pursuant to section 4328 and performance standards. The municipality or multimunicipal region should also identify which rural areas qualify as critical rural areas as defined in this chapter. Critical rural areas must receive priority consideration for proactive strategies designed to enhance rural industries, manage wildlife and fisheries habitat and preserve sensitive natural areas.

(3) A municipality or multimunicipal region may also designate as a transitional area any portion of land area that does not meet the definition of either a growth area or a rural area. Such an area may be appropriate for medium-density development that does not require expansion of municipal facilities and does not include significant rural resources.

(4) A municipality or multimunicipal region is not required to identify growth areas for residential, commercial or industrial growth if it demonstrates that it is not possible to accommodate future residential, commercial or industrial growth in these areas because of severe physical limitations, including, without limitation, the lack of

adequate water supply and sewage disposal services, very shallow soils or limitations imposed by protected natural resources.

(5) A municipality or multimunicipal region is not required to identify growth areas for residential, commercial or industrial growth if it demonstrates that the municipality or multimunicipal region has experienced minimal or no residential, commercial or industrial development over the past decade and this condition is expected to continue over the 10-year planning period.

(6) A municipality or multimunicipal region exercising the discretion afforded by subparagraph 4 or 5 shall review the basis for its demonstration during the periodic revisions undertaken pursuant to section 4347-A;

B. Develop a capital investment plan for financing the replacement and expansion of public facilities and services required to meet projected growth and development;

C. Protect, maintain and, when warranted, improve the water quality of each water body pursuant to Title 38, chapter 3, subchapter I, article 4-A and ensure that the water quality will be protected from long-term and cumulative increases in phosphorus from development in great pond watersheds;

D. Ensure that its land use policies and ordinances are consistent with applicable state law regarding critical natural resources. A municipality or multimunicipal region, if authorized to enact ordinances, may adopt ordinances more stringent than applicable state law;

E. Ensure the preservation of access to coastal waters necessary for commercial fishing, commercial mooring, docking and related parking facilities. Each coastal area may identify and designate one or more critical waterfront areas and implement policies to ensure protection of those areas or otherwise discourage new development that is incompatible with uses related to the marine resources industry;

F. Ensure the protection of agricultural and forest resources. Each municipality or multimunicipal region shall discourage new development that is incompatible with uses related to the agricultural and forest industries;

G. Ensure that the municipality's or multimunicipal region's land use policies and ordinances encourage the siting and construction of affordable housing within the community and comply with the requirements of section 4358 pertaining to individual mobile home and mobile home park siting and design requirements. The municipality or multimunicipal region shall seek to achieve a level of at least 10% of new residential development, based on a 5-year historical average of residential development in the municipality or multimunicipal region, that meets the definition of affordable housing. A municipality or multimunicipal region is encouraged to seek creative approaches to assist in the development of affordable housing, including, but not limited to, cluster housing, reduced minimum lot and frontage sizes, increased residential densities and use of municipally owned land;

H. Ensure that the value of historical and archeological resources is recognized and that protection is afforded to those resources that merit it;

I. Encourage the availability of and access to traditional outdoor recreation opportunities, including, without limitation, hunting, boating, fishing and hiking, and encourage the creation of greenbelts, public parks, trails and conservation easements. Each municipality or multimunicipal region shall identify and encourage the protection of undeveloped shoreland and other areas identified in the local planning process as meriting that protection; and

J. Develop management goals for great ponds pertaining to the type of shoreline character, intensity of surface water use, protection of resources of state significance and type of public access appropriate for the intensity of use of great ponds within the municipality's or multimunicipal region's jurisdiction.

4. Regional coordination program. A regional coordination program must be developed with other municipalities or multimunicipal regions to manage shared resources and facilities, such as rivers, aquifers, transportation facilities and others. This program must provide for consistency with the comprehensive plans of other municipalities or multimunicipal regions for these resources and facilities.

5. Implementation program. An implementation program must be adopted that is consistent with the strategies in subsection 3-A.

§4328. Transfer of development rights

In order to comply with the requirement in section 4326 for each municipality to adopt land use policies and ordinances to discourage incompatible development, a municipality may adopt a transfer of development rights program for the transfer of development rights within its boundaries. Two or more municipalities may adopt a program that provides for the transfer of development rights between the municipalities if the municipalities have entered into an

interlocal agreement pursuant to chapter 115 for this purpose.

Article 2-A: Evaluation

§4331. Evaluation process

The office shall conduct an ongoing evaluation process to determine the effectiveness of state, regional and local efforts under this chapter to achieve the purposes and goals of this chapter. Working through the Land and Water Resources Council, the office shall seek the assistance of other state agencies. If requested, all state agencies shall render assistance to the office in this effort.

1. Criteria. In conducting the evaluation, the office shall develop criteria based on the goals of this chapter. The criteria must be objective, verifiable and, to the extent practicable, quantifiable.

2. Baseline conditions. The office shall establish a baseline of land use conditions at a level of detail sufficient to permit general comparison of state and regional trends in future land use development patterns.

3. Public input. The office shall incorporate opportunities for public input and comment into the evaluation process.

4. Level of analysis. The office shall evaluate the program generally at a regional and statewide level. To illustrate the impact of the program, the office shall compare land use development trends and patterns in a sample of towns that have participated in the program with a matched sample of towns that have not participated. The evaluation performed by the office must include an analysis of the State's financial commitment to growth management

5. Periodic reports. Beginning on January 1, 1995, the office shall report in writing on the results of its evaluation process every 4 years and more frequently if necessary. The office shall submit its report to the joint standing committee of the Legislature having jurisdiction over natural resources matters and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs.

Article 3-A: FINANCIAL AND TECHNICAL ASSISTANCE PROGRAM

§4345. Purpose; office to administer program

Under the provisions of this article, a municipality or multimunicipal region may request financial or technical assistance from the office for the purpose of planning and implementing a growth management program. A municipality or multimunicipal region that requests and receives a financial assistance grant shall develop and implement its growth management program in cooperation with the office and in a manner consistent with the procedures, goals and guidelines established in this subchapter.

To accomplish the purposes of this article, the office shall develop and administer a technical and financial assistance program for municipalities or multimunicipal regions. The program must include direct financial assistance for planning and implementation of growth management programs, standards governing the review of growth management programs by the office, technical assistance to municipalities or multimunicipal regions and a voluntary certification program for growth management programs.

§4346. Technical and financial assistance program

The technical and financial assistance program for municipalities, regional councils and multimunicipal regions is established to encourage and facilitate the adoption and implementation of local, regional and statewide growth management programs.

The office may enter into financial assistance grants only to the extent that funds are available. In making grants, the office shall consider the need for planning in a municipality or multimunicipal region, the proximity of the municipality or multimunicipal region to other areas that are conducting or have completed the planning process and the economic and geographic role of the municipality or multimunicipal region within a regional context. The office may consider other criteria in making grants, as long as the criteria support the goal of encouraging and facilitating the adoption and implementation of local and multimunicipal growth management programs consistent with the procedures, goals and guidelines established in this subchapter. In order to maximize the availability of the technical and financial assistance program to all municipalities, multimunicipal regions and regional councils, financial assistance programs administered competitively under this article are exempt from rules adopted by the Department of Administrative and Financial Services pursuant to Title 5, section 1825-C for use in the purchase of services and the awarding of grants and contracts. The office shall publish a program statement describing its grant program and advertising its availability to eligible applicants.

2-A. Financial assistance grants. A contract for a financial assistance grant must.

- A. Provide for the payment of a specific amount for the purposes of planning and preparing a comprehensive plan;
- B. Provide for the payment of a specific amount for the purposes of implementing that plan; and
- C. Include specific timetables governing the preparation and submission of products by the municipality or multimunicipal region.

The office may not require a municipality or multimunicipal region to provide matching funds in excess of 25% of the value of that municipality's or multimunicipal region's financial assistance contract for its first planning assistance grant and implementation assistance grant. The office may require a higher match for other grants, including, but not limited to, grants for the purpose of updating comprehensive plans. This match limitation does not apply to distribution of federal funds that the office may administer.

2-B. Use of funds. A municipality or multimunicipal region may expend financial assistance grants for:

- A. The conduct of surveys, inventories and other data-gathering activities;
- B. The hiring of planning and other technical staff;
- C. The retention of planning consultants;
- D. Contracts with regional councils for planning and related services;
- E. Assistance in the development of ordinances;
- F. Retention of technical and legal expertise;
- G. The updating of growth management programs or components of a program;
- G-1. Evaluation of growth management programs; and
- H. Any other purpose agreed to by the office and the municipality or multimunicipal region that is directly related to the preparation of a comprehensive plan or the implementation of a comprehensive plan adopted in accordance with the procedures, goals and guidelines established in this subchapter.

2-C. Program evaluation. Any recipient of a financial assistance grant shall cooperate with the office in performing program evaluations required under section 4331.

2-D. Encumbered balances at year-end. Notwithstanding Title 5, section 1589, at the end of each fiscal year, all encumbered balances accounts for financial assistance and regional planning grants may be carried forward for 2 years beyond the year in which those balances are encumbered.

3. Technical assistance. Using its own staff, the staff of other state agencies, contractors and the resources of the regional councils, the office shall provide technical assistance to municipalities or multimunicipal regions in the development, administration and enforcement of growth management programs. The technical assistance component of the program must include a set of model land use ordinances or other implementation strategies developed by the office that are consistent with this subchapter.

4. Regional council assistance. As part of the technical and financial assistance program, the office may develop and administer a program to develop regional education and training programs, regional policies to address state goals and regional assessments. Regional assessments may include, but are not limited to, public infrastructure, inventories of agricultural and commercial forest lands, housing needs, recreation and open space needs, and projections of regional growth and economic development. The program may include guidelines to ensure methodological consistency among the State's regional councils. To implement this program, the office may contract with regional councils to assist the office in reviewing growth management programs, to develop necessary planning information at a regional level or to provide support for local planning efforts.

5. Coordination. State agencies with regulatory or other authority affecting the goals established in this subchapter shall conduct their respective activities in a manner consistent with the goals established under this subchapter, including, but not limited to, coordinating with municipalities, regional councils and other state agencies in meeting the state goals; providing available information to regions and municipalities as described in section 4326, subsection 1; cooperating with efforts to integrate and provide access to geographic information system data; making state investments and awarding grant money as described in section 4349-A; and conducting reviews of growth management programs as provided in section 4347-A, subsection 3, paragraph A. Without limiting the application of this section to other state

agencies, the following agencies shall comply with this subchapter. The Land and Water Resources Council shall periodically, but in no event less than biannually, review the effectiveness of agency coordination efforts, including, but not limited to, those in section 4349-A:

- A. Department of Conservation;
- B. Department of Economic and Community Development;
- C. Department of Environmental Protection;
- D. Department of Agriculture, Food and Rural Resources;
- E. Department of Inland Fisheries and Wildlife;
- F. Department of Marine Resources;
- G. Department of Transportation;
- G-1. Department of Health and Human Services;
- G-2. Executive Department, State Planning Office;
- H. Finance Authority of Maine; and
- I. Maine State Housing Authority.

§4347-A. Review of programs by office

1. Comprehensive plans. A municipality or multimunicipal region that chooses to prepare a growth management program and receives a planning grant under this article shall submit its comprehensive plan to the office for review. A municipality or multimunicipal region that chooses to prepare a growth management program without receiving a planning grant under this article may submit its comprehensive plan to the office for review. The office shall review plans for consistency with the procedures, goals and guidelines established in this subchapter. A contract for a planning assistance grant must include specific timetables governing the review of the comprehensive plan by the office. A comprehensive plan submitted for review more than 12 months following a contract end date may be required to contain data, projections and other time-sensitive portions of the plan or program that are in compliance with the office's most current review standards.

2. Growth management programs. A municipality or multimunicipal region may at any time request a certificate of consistency for its growth management program.

A. Upon a request for review under this section, the office shall review the program and determine whether the program is consistent with the procedures, goals and guidelines established in this subchapter.

B. Certification by the office of a municipality's or multimunicipal region's growth management program under this article is valid for 10 years. To maintain certification, a municipality or multimunicipal region shall periodically review its growth management program and submit to the office in a timely manner any revisions necessary to account for changes, including changes caused by growth and development. Certification does not lapse in any year in which the Legislature does not appropriate funds to the office for the purposes of reviewing programs for recertification.

C. Upon a request for review under this section, the office may review rate of growth, impact fee and zoning ordinances to determine whether the ordinances are consistent with a comprehensive plan that has been found consistent under this section without requiring submission of all elements of a growth management program. An affirmative finding of consistency by the office is required for a municipality or multimunicipal region to assert jurisdiction as provided in section 4349-A.

3. Review of comprehensive plan or growth management program. In reviewing a comprehensive plan or growth management program, the office shall:

A. Solicit written comments on any proposed comprehensive plan or growth management program from regional councils, state agencies, all municipalities contiguous to the municipality or multimunicipal region submitting a comprehensive plan or growth management program and any interested residents of the municipality or multimunicipal region or of contiguous municipalities. The comment period extends for 45 days after the office receives the comprehensive plan or growth management program.

(1) Each state agency reviewing the proposal shall designate a person or persons responsible for coordinating

the agency's review of the comprehensive plan or growth management program.

(2) Any regional council commenting on a program shall determine whether the program is compatible with the programs of other municipalities that may be affected by the program and with regional policies or needs identified by the regional council;

B. Prepare all written comments from all sources in a form to be forwarded to the municipality or multimunicipal region;

C. Within 60 days after receiving the comprehensive plan or 90 days after receiving the growth management program, send all written comments on the comprehensive plan or growth management program to the municipality or multimunicipal region and any applicable regional council. If warranted, the office shall issue findings specifically describing how the submitted plan or growth management program is not consistent with the procedures, goals and guidelines established in this subchapter and the recommended measures for remedying the deficiencies.

(1) In its findings, the office shall clearly indicate its position on any point on which there are significant conflicts among the written comments submitted to the office.

(2) If the office finds that the comprehensive plan or growth management program was adopted in accordance with the procedures, goals and guidelines established in this subchapter, the office shall issue a finding of consistency for the comprehensive plan or a certificate of consistency for the growth management program.

(3) Notwithstanding paragraph D, if a municipality or multimunicipal region requests a certificate of consistency for its growth management program, any unmodified component of that program that has previously been reviewed by the office and has received a finding of consistency will retain that finding during program certification review by the office as long as the finding of consistency is current as defined in rules adopted by the office;

D. Provide ample opportunity for the municipality or multimunicipal region submitting a comprehensive plan or growth management program to respond to and correct any identified deficiencies in the plan or program. A finding of inconsistency for a comprehensive plan or growth management program may be addressed within 24 months of the date of the finding without addressing any new review standards that are created during that time interval. After 24 months, the plan or program must be resubmitted in its entirety for state review under the office's most current review standards; and

E. Provide an expedited review and certification procedure for those submissions that represent minor amendments to certified growth management programs.

The office's decision on consistency of a comprehensive plan or growth management program constitutes final agency action.

4. Updates and amendments. A municipality or multimunicipal region may submit proposed amendments to a comprehensive plan or growth management program to the office for review in the same manner as provided for the review of new plans and programs. Subsequent to voluntary certification under this subsection, the municipality or multimunicipal region shall file a copy of an amendment to a growth management program with the office within 30 days after adopting the amendment and at least 60 days prior to applying for any state grant program that offers a preference for consistency or certification. [2001, c. 578, §20 (amd).]

5. Regional councils. Subject to the availability of funding and pursuant to the conditions of a contract, each regional council shall review and submit written comments on the comprehensive plan or growth management program of any municipality or multimunicipal region within its planning region. The comments must be submitted to the office and contain an analysis of:

A. Whether the comprehensive plan or growth management program is compatible with identified regional policies and needs; and

B. Whether the comprehensive plan or growth management program is compatible with plans or programs of municipalities or multimunicipal regions that may be affected by the proposal.

§4349-A. State capital investments

1. Growth-related capital investments. The State may make growth-related capital investments only in:

A. A locally designated growth area, as identified in a comprehensive plan adopted pursuant to and consistent with

the procedures, goals and guidelines of this subchapter or as identified in a growth management program certified under section 4347-A;

B. In the absence of a consistent comprehensive plan, an area served by a public sewer system that has the capacity for the growth-related project, an area identified in the latest Federal Decennial Census as a census-designated place or a compact area of an urban compact municipality as defined by Title 23, section 754; or

C. Areas other than those described in paragraph A or B for the following projects:

- (1) A project certified to the Land and Water Resources Council established in Title 5, section 3331 by the head of the agency funding the project as necessary to remedy a threat to public health or safety or to comply with environmental clean-up laws;
- (2) A project related to a commercial or industrial activity that, due to its operational or physical characteristics, typically is located away from other development, such as an activity that relies on a particular natural resource for its operation;
- (3) An airport, port or railroad or industry that must be proximate to an airport, a port or a railroad line or terminal;
- (4) A pollution control facility;
- (5) A project that maintains, expands or promotes a tourist or cultural facility that is required to be proximate to a specific historic, natural or cultural resource or a building or improvement that is related to and required to be proximate to land acquired for a park, conservation, open space or public access or to an agricultural, conservation or historic easement;
- (6) A project located in a municipality that has none of the geographic areas described in paragraph A or B and that prior to January 1, 2000 formally requested but had not received from the office funds to assist with the preparation of a comprehensive plan or that received funds to assist with the preparation of a comprehensive plan within the previous 2 years. This exception expires for a municipality 2 years after such funds are received;
- (7) A housing project serving the following: individuals with mental illness, mental retardation, developmental disabilities, physical disabilities, brain injuries, substance abuse problems or a human immunodeficiency virus; homeless individuals; victims of domestic violence; foster children; or children or adults in the custody of the State. A nursing home is not considered a housing project under this paragraph; or
- (8) A project certified to the Land and Water Resources Council established in Title 5, section 3331 by the head of the agency funding the project as having no feasible location within an area described in paragraph A or B if, by majority vote of all members, the Land and Water Resources Council finds that extraordinary circumstances or the unique needs of the agency require state funds for the project. The members of the Land and Water Resources Council may not delegate their authority under this subparagraph to the staffs of their member agencies.

2. State facilities. The Department of Administrative and Financial Services, Bureau of General Services shall develop site selection criteria for state office buildings, state courts, hospitals and other quasi-public facilities and other civic buildings that serve public clients and customers, whether owned or leased by the State, that give preference to the priority locations identified in this subsection while ensuring safe, healthy, appropriate work space for employees and clients and accounting for agency requirements. On-site parking may only be required if it is necessary to meet critical program needs and to ensure reasonable access for agency clients and persons with disabilities. Employee parking that is within reasonable walking distance may be located off site. If there is a change in employee parking from on-site parking to off-site parking, the Department of Administrative and Financial Services must consult with the duly authorized bargaining agent or agents of the employees. Preference must be given to priority locations in the following order: service center downtowns, service center growth areas and downtowns and growth areas in other than service center communities. If no suitable priority location exists or if the priority location would impose an undue financial hardship on the occupant or is not within a reasonable distance of the clients and customers served, the facility must be located in accordance with subsection 1. The following state facilities are exempt from this subsection: a state liquor store; a lease of less than 500 square feet; and a lease with a tenure of less than one year, including renewals.

2-A. State's role in implementation of growth management programs. All state agencies, as partners in local and regional growth management efforts, shall contribute to the successful implementation of comprehensive plans and growth management programs adopted under this subchapter by making investments, delivering programs and awarding

grants in a manner that reinforces the policies and strategies within the plans or programs. Assistance must be provided within the confines of agency policies, available resources and considerations related to overriding state interest.

3-A. Preference for other state grants and investments. Preference for other state grants and investments is governed by this subsection.

A. When awarding a grant or making a discretionary investment under any of the programs under paragraph B, subparagraphs (1) and (2) or when undertaking its own capital investment programs other than for projects identified in section 4301, subsection 5-B, a state agency shall respect the primary purpose of its grant or investment program and, to the extent feasible, give preference:

- (1) First, to a municipality that has received a certificate of consistency for its growth management program under section 4347-A;
- (2) Second, to a municipality that has adopted a comprehensive plan that the office has determined is consistent with the procedures, goals and guidelines of this subchapter and has adopted zoning ordinances that the office has determined are consistent with the comprehensive plan; and
- (3) Third, to a municipality that has adopted a comprehensive plan that the office has determined is consistent with the procedures, goals and guidelines of this subchapter.

If a municipality has submitted a comprehensive plan, zoning ordinance or growth management program to the office for review, the time for the office to respond as established in section 4347-A has expired and the office has not provided its comments or findings to the municipality, a state agency when awarding a grant or making a discretionary investment under this subsection may not give preference over the municipality to another municipality.

B. This subsection applies to:

- (1) Programs that assist in the acquisition of land for conservation, natural resource protection, open space or recreational facilities under Title 5, chapter 353; and
- (2) Programs intended to:
 - (a) Accommodate or encourage additional growth and development;
 - (b) Improve, expand or construct public facilities; or
 - (c) Acquire land for conservation or management of specific economic and natural resource concerns.

C. This subsection does not apply to state grants or other assistance for sewage treatment facilities, public health programs or education.

D. The office shall work with state agencies to prepare mechanisms for establishing preferences in specific investment and grant programs as described in paragraph B.

4. Application. Subsections 1 and 2 apply to a state capital investment for which an application is accepted as complete by the state agency funding the project after January 1, 2001 or which is initiated with the Department of Administrative and Financial Services, Bureau of General Services by a state agency after January 1, 2001.

Article 3-B: COMMUNITY PRESERVATION ADVISORY COMMITTEE

§4350. Community Preservation Advisory Committee (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 6/1/08)

1. Establishment; purpose. The Community Preservation Advisory Committee, established by Title 5, section 12004-I, subsection 24-F and referred to in this article as the "committee," shall advise the Governor, the Legislature, the office and other pertinent state agencies and entities on matters relating to community preservation.

2. Membership; appointment. The committee consists of the following 13 members:

A. The Director of the State Planning Office or the director's designee;

B. Two members from the Senate appointed by the President of the Senate, at least one belonging to the political party holding the largest number of seats in the Senate and at least one belonging to the political party holding the 2nd largest number of seats in the Senate. When making the appointments, the President of the Senate shall give preference to members from the joint standing committees of the Legislature having jurisdiction over natural

resources matters, state and local government matters, education matters, transportation matters, taxation matters and business and economic development matters. When making the appointments, the President of the Senate also shall consider appointing members who represent a rural community, a fast-growing community or a service center community;

C. Four members from the House of Representatives appointed by the Speaker of the House, at least one belonging to the political party holding the largest number of seats in the House of Representatives and at least one belonging to the political party holding the 2nd largest number of seats in the House of Representatives. When making the appointments, the Speaker of the House shall give preference to members from the joint standing committees of the Legislature having jurisdiction over natural resources matters, state and local government matters, education matters, transportation matters, taxation matters and business and economic development matters. When making the appointments, the Speaker of the House also shall consider appointing a member who represents a rural community, a member who represents a fast-growing community and a member who represents a service center community;

D. One member representing a statewide housing authority, appointed by the President of the Senate;

E. One member representing an environmental organization, appointed by the Speaker of the House;

F. Two members representing municipal interests, one who represents rural municipal interests and one who represents service center municipal interests, appointed by the President of the Senate;

G. One member representing the real estate or development industry, appointed by the Speaker of the House; and

H. The Director of the Maine Historic Preservation Commission or the director's designee.

3. Terms. Except for Legislators, who serve terms coincident with their legislative terms, all members are appointed for 3-year terms. A vacancy must be filled by the same appointing authority that made the original appointment. Appointed members may not serve more than 2 terms. Members may continue to serve until their replacements are designated.

4. Compensation. Legislative members are entitled to receive the legislative per diem, as defined in Title 3, section 2, and to reimbursement for expenses according to Title 5, section 12004-I, subsection 24-F. Public members not otherwise compensated by their employers or other entities that they represent are entitled to reimbursement of necessary expenses incurred for their attendance at authorized meetings of the committee.

5. Quorum; actions. A quorum is a majority of the members of the committee. An affirmative vote of the majority of the members present at a meeting is required for any action. Action may not be considered unless a quorum is present.

6. Chairs. The first appointed Senate member is the Senate chair of the committee and the first appointed House of Representatives member is the House chair of the committee.

7. Meetings. The committee may not meet more than 4 times per year.

8. Drafting assistance. The office shall provide the committee with staff assistance. Upon the approval of the Legislative Council, the Office of Policy and Legal Analysis may provide drafting assistance with the preparation of recommended legislation as requested by the chairs of the committee. The drafting assistance provided by the Office of Policy and Legal Analysis may be provided only when the Legislature is not in session.

9. Duties. The committee shall:

A. Submit an annual report of the committee's activities to the Legislature and the joint standing committee of the Legislature having jurisdiction over natural resources matters by December 1st of each year;

B. Provide assessment, advice and recommendations on emerging policy concerns or on adjustments to existing programs related to growth management;

C. Review and make recommendations on the State's fiscal, transportation, education funding, school-siting and land use policies that affect service center communities, rural lands and development sprawl;

D. Review tax policy as it affects land use decisions;

E. Provide assessment, advice and recommendations on the role of state office buildings in the continued viability of downtown service centers within the State and the impact of growth-related capital investments and location decisions by the State;

F. Provide assessment, advice and recommendations on the coordination of state and local urban transportation

planning and streamlining of local and state land use rules and regulations to permit and encourage efficient neighborhood and economic development in growth areas; and

G. Review and make recommendations regarding options for establishing a state transferable development rights bank.

10. Legislation. By January 15th of each odd-numbered year, the committee may submit legislation related to its annual reports under subsection 9, paragraph A.

(WHOLE SECTION TEXT REPEALED 6/1/08 by T. 30-A, §4350-A; PL 2001, c. 648, §2)

§4350-A. Repeal date (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

This article is repealed June 1, 2008.

Subchapter 3: LAND USE REGULATION

§4351. Home rule limitations

This subchapter provides express limitations on municipal home rule authority.

§4352. Zoning ordinances

A municipal zoning ordinance may provide for any form of zoning consistent with this chapter, subject to the following provisions. [1989, c. 104, Pt. A, §45 and Pt. C, §10 (new).]

1. Public participation required. The public shall be given an adequate opportunity to be heard in the preparation of a zoning ordinance.

2. Relation to comprehensive plan. A zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body, except that adoption of an adult entertainment establishment ordinance does not necessitate adoption of a comprehensive plan by a municipality that has no such comprehensive plan. As used in this section, "adult entertainment establishment ordinance" means an ordinance that regulates the operation of adult amusement stores, adult video stores, adult bookstores, adult novelty stores, adult motion picture theaters, on-site video screening establishments, adult arcades, adult entertainment nightclubs or bars, adult spas, establishments featuring strippers or erotic dancers, escort agencies or other sexually oriented businesses.

3. Zoning map required. A zoning map describing each zone established or modified must be adopted as part of the zoning ordinance or incorporated in the ordinance. Any conflict between the zoning map and a description by metes and bounds shall be resolved in favor of the description by metes and bounds.

4. Exemption for public service corporations. Real estate used or to be used by a public service corporation is wholly or partially exempt from an ordinance only when on petition, notice and public hearing the Public Utilities Commission determines that the exemption is reasonably necessary for public welfare and convenience.

5. Effect on local governments. County and municipal governments and districts are subject to any zoning ordinance.

6. Effect on State. A zoning ordinance that is not consistent with a comprehensive plan that is consistent with the provisions of section 4326 is advisory with respect to the State. Except as provided in this section, a state agency shall comply with a zoning ordinance consistent with a comprehensive plan that is consistent with the provisions of section 4326 in seeking to develop any building, parking facility or other publicly owned structure. The Governor or the Governor's designee may, after public notice and opportunity for public comment, including written notice to the municipal officers, waive any use restrictions in those ordinances upon finding that:

- A. The proposed use is not allowed anywhere in the municipality;
- B. There are no reasonable alternative sites for or configurations of the project within the municipality that would achieve the necessary public purposes;
- C. There are no reasonable alternatives to the project, including sites in other municipalities, that would achieve the necessary public purposes;
- D. The project will result in public benefits beyond the limits of the municipality, including without limitation, access to public waters or publicly owned lands; and
- E. The project is necessary to protect the public health, welfare or environment.

A decision to waive a restriction under this section may be appealed by the municipality or any aggrieved party to Superior Court.

7. Petition for rezoning; bond. Any zoning ordinance may provide that if a person petitions for rezoning of an area for the purpose of development in accordance with an architect's plan the area may not be rezoned unless the petitioner posts a performance bond equal to at least 25% of the estimated cost of the development. The bond shall become payable to the municipality if the petitioner fails to begin construction in a substantial manner and in accordance with the plan within one year of the effective date of the rezoning.

8. Conditional and contract rezoning. A zoning ordinance may include provisions for conditional or contract zoning. All rezoning under this subsection must:

- A. Be consistent with the growth management program adopted under this chapter;
- B. Establish rezoned areas that are consistent with the existing and permitted uses within the original zones; and
- C. Only include conditions and restrictions that relate to the physical development or operation of the property.

The municipal reviewing authority shall conduct a public hearing before any property is rezoned under this subsection. Notice of this hearing must be posted in the municipal office at least 13 days before the public hearing. Notice must also be published at least 2 times in a newspaper having general circulation in the municipality. The date of the first publication must be at least 7 days before the hearing. Notice must also be sent to the owner or owners of the property to be rezoned and to the owners of all property abutting the property to be rezoned at the owners' last known addresses. Notice also must be sent to a public drinking water supplier if the area to be rezoned is within its source water protection area. This notice must contain a copy of the proposed conditions and restrictions with a map indicating the property to be rezoned.

9. Notice; general requirements. Before adopting a new zoning ordinance or map or amending an existing zoning ordinance or map, including ordinances or amendments adopted under the laws governing growth management contained in chapter 187, subchapter II or the laws governing shoreland zoning contained in Title 38, chapter 3, subchapter I, article 2-B, the municipal reviewing authority must post and publish notice of the public hearing required under subsection 1 in accordance with the following provisions.

- A. The notice must be posted in the municipal office at least 13 days before the public hearing.
- B. The notice must be published at least 2 times in a newspaper that complies with Title 1, section 601 and that has a general circulation in the municipality. The date of the first publication must be at least 12 days before the hearing and the date of the 2nd publication must be at least 7 days before the hearing. That notice must be written in plain English, understandable by the average citizen.
- E. Notice must be sent by regular mail to a public drinking water supplier if the area to be rezoned contains its source water protection area.

10. Additional notice; limited areas. Notice must be given in accordance with this subsection and subsection 9 when a municipality has proposed an amendment to an existing zoning ordinance or map that, within a geographically specific portion of the municipality, has the effect of either prohibiting all industrial, commercial or retail uses where any of these uses is permitted or permitting any industrial, commercial or retail uses where any of these uses is prohibited.

- A. The notice must contain a copy of a map indicating the portion of the municipality affected by the proposed amendment.
- B. For each parcel within the municipality that is in or abutting the portion of the municipality affected by the proposed amendment, the notice must be mailed by first class mail at least 13 days before the public hearing to the last known address of the person to whom property tax on each parcel is assessed. Notice also must be sent to a public drinking water supplier if the area to be rezoned is within its source water protection area. The municipal officers shall prepare and file with the municipal clerk a written certificate indicating those persons to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed and from what location it was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. Notice is not required under this paragraph for any type of zoning ordinance adopted under the laws governing growth management contained in chapter 187, subchapter II or the laws governing shoreland zoning contained in Title 38, chapter 3, subchapter I, article 2-B.

Any action challenging the validity of an amendment to a zoning ordinance or map based on a municipality's failure to comply with paragraph B must be brought in Superior Court within 30 days after the adoption of the amended

ordinance or map. The Superior Court may invalidate an amended ordinance or map if the appellant demonstrates that the appellant was entitled to receive a notice under paragraph B, that the municipality failed to send the notice as required, that the appellant had no knowledge of the proposed amendment to the ordinance or map and that the appellant was materially prejudiced by that lack of knowledge. Nothing in this subsection alters the right of a person to challenge the validity of any ordinance based on the failure of the municipality to provide notice as required in paragraph A and subsection 9.

§4353. Zoning adjustment

Any municipality which adopts a zoning ordinance shall establish a board of appeals subject to this section.

1. Jurisdiction; procedure. The board of appeals shall hear appeals from any action or failure to act of the official or board responsible for enforcing the zoning ordinance, unless only a direct appeal to Superior Court has been provided by municipal ordinance. The board of appeals is governed by section 2691, except that section 2691, subsection 2, does not apply to boards existing on September 23, 1971.

2. Powers. In deciding any appeal, the board may:

A. Interpret the provisions of an ordinance called into question;

B. Approve the issuance of a special exception permit or conditional use permit in strict compliance with the ordinance except that, if the municipality has authorized the planning board, agency or office to issue these permits, an appeal from the granting or denial of such a permit may be taken directly to Superior Court if required by local ordinance; and

C. Grant a variance in strict compliance with subsection 4.

3. Parties. The board shall reasonably notify the petitioner, the planning board, agency or office and the municipal officers of any hearing. These persons shall be made parties to the action. All interested persons shall be given a reasonable opportunity to have their views expressed at any hearing. [1989, c. 104, Pt. A, §45 and Pt. C, §10 (new).]

4. Variance. Except as provided in subsections 4-A, 4-B and 4-C, the board may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

A. The land in question can not yield a reasonable return unless a variance is granted;

B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

C. The granting of a variance will not alter the essential character of the locality; and

D. The hardship is not the result of action taken by the applicant or a prior owner.

Under its home rule authority, a municipality may, in a zoning ordinance, adopt additional limitations on the granting of a variance, including, but not limited to, a provision that a variance may be granted only for a use permitted in a particular zone.

4-A. Disability variance. The board may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this subsection, a disability has the same meaning as a physical or mental handicap under Title 5, section 4553 and the term "structures necessary for access to or egress from the dwelling" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

4-B. Set-back variance for single-family dwellings. A municipality may adopt an ordinance that permits the board to grant a set-back variance for a single-family dwelling. An ordinance adopted under this subsection may permit a variance from a set-back requirement only when strict application of the zoning ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

A. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

B. The granting of a variance will not alter the essential character of the locality;

- C. The hardship is not the result of action taken by the applicant or a prior owner;
- D. The granting of the variance will not substantially reduce or impair the use of abutting property; and
- E. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

An ordinance adopted under this subsection is strictly limited to permitting a variance from a set-back requirement for a single-family dwelling that is the primary year-round residence of the petitioner. A variance under this subsection may not exceed 20% of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. An ordinance may allow for a variance under this subsection to exceed 20% of a set-back requirement, except for minimum setbacks from a wetland or water body required within shoreland zones by rules adopted pursuant to Title 38, chapter 3, subchapter I, article 2-B, if the petitioner has obtained the written consent of an affected abutting landowner.

4-C. Variance from dimensional standards. A municipality may adopt an ordinance that permits the board to grant a variance from the dimensional standards of a zoning ordinance when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

- A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
- B. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
- C. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
- D. No other feasible alternative to a variance is available to the petitioner;
- E. The granting of a variance will not unreasonably adversely affect the natural environment; and
- F. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

Under its home rule authority, a municipality may, in an ordinance adopted pursuant to this subsection, adopt additional limitations on the granting of a variance from the dimensional standards of a zoning ordinance. A zoning ordinance also may explicitly delegate to the municipal reviewing authority the ability to approve development proposals that do not meet the dimensional standards otherwise required, in order to promote cluster development, to accommodate lots with insufficient frontage or to provide for reduced setbacks for lots or buildings made nonconforming by municipal zoning. As long as the development falls within the parameters of such an ordinance, the approval is not considered the granting of a variance. This delegation of authority does not authorize the reduction of dimensional standards required under the mandatory shoreland zoning laws, Title 38, chapter 3, subchapter 1, article 2-B.

5. Variance recorded. If the board grants a variance under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form. This certificate must be recorded in the local registry of deeds within 90 days of the date of the final written approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection. For the purpose of this subsection, the date of the final written approval shall be the date stated on the written approval.

§4354. Impact fees

A municipality may enact an ordinance under its home rule authority requiring the construction of off-site capital improvements or the payment of impact fees instead of the construction. Notwithstanding section 3442, subsection 2, an impact fee may be imposed that results in a developer or developers paying the entire cost of an infrastructure improvement. A municipality may impose an impact fee either before or after completing the infrastructure improvement.

1. Construction or fees may be required. The requirements may include construction of capital improvements or impact fees instead of capital improvements including the expansion or replacement of existing infrastructure facilities

and the construction of new infrastructure facilities.

A. For the purposes of this subsection, infrastructure facilities include, but are not limited to:

- (1) Waste water collection and treatment facilities;
- (2) Municipal water facilities;
- (3) Solid waste facilities;
- (4) Public safety equipment and facilities;
- (5) Roads and traffic control devices;
- (6) Parks and other open space or recreational areas; and
- (7) School facilities.

2. Restrictions. Any ordinance that imposes or provides for the imposition of impact fees must meet the following requirements.

A. The amount of the fee must be reasonably related to the development's share of the cost of infrastructure improvements made necessary by the development or, if the improvements were constructed at municipal expense prior to the development, the fee must be reasonably related to the portion or percentage of the infrastructure used by the development.

B. Funds received from impact fees must be segregated from the municipality's general revenues. The municipality shall expend the funds solely for the purposes for which they were collected.

C. The ordinance must establish a reasonable schedule under which the municipality is required to use the funds in a manner consistent with the capital investment component of the comprehensive plan.

D. The ordinance must establish a mechanism by which the municipality shall refund impact fees, or that portion of impact fees, actually paid that exceed the municipality's actual costs or that were not expended according to the schedule under this subsection.

3. Deposit fees in trust fund. Municipalities that are part of a school administrative district or other single or multicommunity school district may deposit collected impact fees in a trust fund to be used to pay their proportionate share of anticipated school capital costs.

§4355. Application fees

Any application fee charged by a municipality for an application for any land use permit issued by the municipality may not exceed the reasonable cost of processing, review, regulation and supervision of the application by the municipality and its consultants and the administration of any requirement for a certificate of compliance with any permit conditions.

§4356. Moratoria

Any moratorium adopted by a municipality on the processing or issuance of development permits or licenses must meet the following requirements.

1. Necessity. The moratorium must be needed:

A. To prevent a shortage or an overburden of public facilities that would otherwise occur during the effective period of the moratorium or that is reasonably foreseeable as a result of any proposed or anticipated development; or

B. Because the application of existing comprehensive plans, land use ordinances or regulations or other applicable laws, if any, is inadequate to prevent serious public harm from residential, commercial or industrial development in the affected geographic area.

2. Definite term. The moratorium must be of a definite term of not more than 180 days. The moratorium may be extended for additional 180-day periods if the municipality adopting the moratorium finds that:

A. The problem giving rise to the need for the moratorium still exists; and

B. Reasonable progress is being made to alleviate the problem giving rise to the need for the moratorium.

3. Extension by selectmen. In municipalities where the municipal legislative body is the town meeting, the

selectmen may extend the moratorium in compliance with subsection 2 after notice and hearing.

§4357-A. Community living arrangements

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Community living arrangement" means a housing facility for 8 or fewer persons with disabilities that is approved, authorized, certified or licensed by the State. A community living arrangement may include a group home, foster home or intermediate care facility.

B. "Disability" has the same meaning as the term "handicap" in the federal Fair Housing Act, 42 United States Code, Section 3602.

2. Single-family use. In order to implement the policy of this State that persons with disabilities are not excluded by municipal zoning ordinances from the benefits of normal residential surroundings, a community living arrangement is deemed a single-family use of property for the purposes of zoning.

§4358. Regulation of manufactured housing

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Manufactured housing" means a structural unit or units designed for occupancy and constructed in a manufacturing facility and transported, by the use of its own chassis or an independent chassis, to a building site. The term includes any type of building that is constructed at a manufacturing facility and transported to a building site where it is used for housing and may be purchased or sold by a dealer in the interim. For purposes of this section, 2 types of manufactured housing are included. Those 2 types are:

(1) Those units constructed after June 15, 1976, commonly called "newer mobile homes," that the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards, meaning structures transportable in one or more sections, that in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and that are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities including the plumbing, heating, air conditioning or electrical systems contained in the unit.

(a) This term also includes any structure that meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq.; and

(2) Those units commonly called "modular homes" that the manufacturer certifies are constructed in compliance with Title 10, chapter 951, and rules adopted under that chapter, meaning structures, transportable in one or more sections, that are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air-conditioning or electrical systems contained in the unit.

B. "Mobile home park" means a parcel of land under unified ownership approved by the municipality for the placement of 3 or more manufactured homes.

B-1. "Mobile home park lot" means the area of land on which an individual home is situated within a mobile home park and which is reserved for use by the occupants of that home. A municipality may require a lot to be designated on a mobile home park plan.

C. "Mobile home subdivision or development" means a parcel of land approved by the municipal reviewing authority under subchapter IV for the placement of manufactured houses on individually owned lots.

D. "Permanent foundation" means:

(1) For "newer mobile homes," as defined in paragraph A, subparagraph (1), a foundation that conforms to the installation standards established by the Manufactured Housing Board; or

(2) For "modular homes," as defined in paragraph A, subparagraph (2), a foundation that conforms to the municipal building code or, in the absence of a municipal building code, a foundation that conforms to the Building Officials and Code Administrators National Code (1990).

E. "Pitched, shingled roof" means a roof with a pitch of 2 or more vertical units for every 12 horizontal units of measurement and which is covered with asphalt or fiberglass composition shingles or other materials, but specifically excludes corrugated metal roofing material.

2. Location of manufactured housing. Municipalities shall permit manufactured housing to be placed or erected on individual house lots in a number of locations on undeveloped lots where single-family dwellings are allowed, subject to the same requirements as single-family dwellings, except as otherwise provided in this section. [1995, c. 199, §1 (amd).]

A. For the locations required by this section, municipal ordinances may not require that manufactured housing on individual lots be greater than 14 feet in width, although municipalities may establish design criteria, including, but not limited to, a pitched, shingled roof; a permanent foundation; and exterior siding that is residential in appearance, provided that:

- (1) The requirements do not have the effect of circumventing the purposes of this section; and
- (2) The design requirements may not be used to prevent the relocation of any manufactured housing, regardless of its date of manufacture, that is legally sited within the municipality as of August 4, 1988.

B. Providing one or more zones or locations where mobile home parks or mobile home subdivisions or developments are allowed does not constitute compliance with this section.

C. This section does not prohibit municipalities from establishing controls on manufactured housing which are less restrictive than are permitted by this section.

D. Municipalities may not prohibit manufactured housing, regardless of its date of manufacture, solely on the basis of a date of manufacture before June 14, 1976, or the failure of a unit to have been manufactured in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Chapter 70. Municipalities may apply the design standards permitted by this section to all manufactured housing, regardless of its date of manufacture, and may apply reasonable safety standards to manufactured housing built before June 15, 1976, or not built in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Chapter 70.

E. Notwithstanding any other provision of law, any modular home that meets construction standards for state-certified manufactured homes adopted pursuant to Title 10, section 9042 must be allowed in all zones where other single-family homes are allowed.

3. Regulation of mobile home parks. This subsection governs a municipality's regulation of mobile home parks.

A. Except as required under Title 38, or an ordinance adopted pursuant to Title 38, a municipality shall not require:

- (1) The size of any mobile home park lot served by a public sewer system to be larger than the smaller of:
 - (a) Six thousand five hundred square feet; or
 - (b) The area of the smallest residential lot permitted in the municipality;
- (2) The size of any mobile home park lot with on-site subsurface waste water disposal to be larger than 20,000 square feet; or
- (3) The size of any mobile home park lot served by a central on-site subsurface waste water disposal system approved by the Department of Health and Human Services to be larger than 12,000 square feet, provided that a municipality may require that the overall density of the mobile home park be no more than one home for every 20,000 square feet.

B. A municipality shall not require the overall area of a mobile home park to be greater than the combined area of its mobile home park lots plus:

- (1) The area required for road rights-of-way;
- (2) The area required for buffer strips, if any; and
- (3) For mobile home parks served by a public sewer, an additional area for open space, storage or recreation, as those terms are defined by local ordinances applicable to all residential developments. A municipality shall not require this additional area to be greater than 10% of the combined area of the individual lots within a mobile home park; and

(4) The area of any setbacks required under Title 38 or an ordinance adopted pursuant to Title 38.

C. Except as required under Title 38 or an ordinance adopted pursuant to Title 38, a municipality shall not require setbacks that have the effect of requiring lots larger than those permitted under paragraph A.

D. Notwithstanding paragraph C, a municipality may require that mobile homes on lots adjacent to a public road be set back from the public road according to requirements applicable to other residential developments.

E. A municipality shall not require road frontage on individual lots within a mobile home park that has the effect of requiring a manufactured home on the lot to be placed parallel to an adjacent private or public roadway.

F. Except as provided by paragraph G, municipal road standards shall not apply to private roads within a mobile home park unless the developer intends to offer the roads to the municipality for acceptance as town ways.

G. A municipality may require by ordinance or rule that privately owned roads within a mobile home park:

- (1) Be built according to acceptable engineering standards and with a professional engineer's seal as required by the Manufactured Housing Board;
- (2) Have a right-of-way up to 23 feet in width, 20 feet of which the municipality may require to be paved; and
- (3) Conform to reasonable safety standards applicable to intersections with public ways adjacent to the mobile home park.

H. The Manufactured Housing Board shall develop standards for construction of roads within a mobile home park no later than January 1, 1990. The board shall submit these standards to the joint standing committee of the Legislature having jurisdiction over legal affairs matters for that committee's review.

I. A municipality may require buffer strips, not to exceed 50 feet, including individual lot setbacks, along any mobile home park boundary which abuts land used for residential use if the per-acre density of homes within the mobile home park is at least 2 times greater than:

- (1) The density of residential development on immediately adjacent parcels of land; or
- (2) If the immediately adjacent parcels of land are undeveloped, the maximum net residential density permitted by applicable municipal ordinances or state law.

No structures, streets or utilities may be placed in the buffer strip, except that utilities may cross a buffer strip to provide services to a mobile home park. Municipalities may impose reasonable natural screening requirements within the first 25 feet of the buffer strip as measured from the exterior boundaries of the mobile home park if the requirements are no greater than those for other residential developments.

J. A municipality shall not require electrical utilities and telephone lines to be located underground within a mobile home park. A municipality shall allow a developer to install utilities anywhere within the mobile home park.

K. Except as required under Title 38, or an ordinance adopted pursuant to Title 38, a municipality may not enact or enforce land use regulations or ordinances, including, but not limited to, subdivision regulations or ordinances, which limit the number of lots in a mobile home park, which circumvent the intent of this section or which conflict with the provisions of this section.

L. Notwithstanding any provision in this subsection, a person developing or expanding a mobile home park has the burden of proving that development will not pollute a public water supply or aquifer or violate any state law relating to land development, subdivision or use.

M. A municipality shall permit mobile home parks to expand and to be developed in a number of environmentally suitable locations in the municipality with reasonable consideration being given to permit existing mobile home parks to expand in their existing locations. A municipality may not select a location for a mobile home park development which is not reasonably suitable because of:

- (1) Prior lot division;
- (2) Locational setting within the municipality;
- (3) Natural features; or
- (4) Other similar factors.

This paragraph is effective January 1, 1990.

4. Certification of payment of sales tax. No municipality may allow the construction or location of any new manufactured housing within the municipality by any person other than a dealer licensed by the State with a sales tax certificate, without:

A. A bill of sale indicating the name, address, dealer registration number and sales tax certificate number of the person who sold or provided the manufactured housing to the buyer locating the housing in the municipality; or

B. If no such bill of sale is presented, evidence of certification of payment of the sales tax in accordance with Title 36, section 1760, subsection 40, and Title 36, section 1952-B.

In municipalities which require any type of permit for manufactured housing, the permit is deemed to be not approved or valid until payment of the sales tax has been certified.

§4358-A. Source water protection area

A municipality must notify a public drinking water supplier if a proposed land use project.

1. Source water protection area. Is within its source water protection area; and

2. Reviewed; abutters notified. Is reviewed by a municipal reviewing authority and, as part of that review, the municipality notifies abutters.

Notice may be sent by regular mail and with the same advance notice requirements afforded abutters.

§4359. State policy relating to municipal commercial landfill facilities moratoria

It is the policy of this State, with respect to commercial landfill facilities:

1. State and municipal control. To affirm the importance of state and municipal control over the establishment of new commercial landfill facilities and over the substantial expansion of existing commercial landfill facilities; and

2. Recognition of home rule authority. To recognize that any municipality may, under its home rule authority, enact a moratorium on the issuance or processing of any municipal permit for a new commercial landfill facility or the substantial expansion of a commercial landfill facility, as defined by Title 38, section 1303, subsection 11-B.

§4360. Rate of growth ordinances

1. Ordinance review and update. A municipality that enacts a rate of growth ordinance shall review and update the ordinance at least every 3 years to determine whether the rate of growth ordinance is still necessary and how the rate of growth ordinance may be adjusted to meet current conditions.

2. Differential ordinances. A municipality may enact rate of growth ordinances that set different limits on the number of building or development permits that are permitted in designated rural areas and designated growth areas.

Subchapter 4: SUBDIVISIONS

§4401. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Densely developed area. "Densely developed area" means any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal structure per 2 acres.

2. Dwelling unit. "Dwelling unit" means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, apartments and time-share units.

2-A. Freshwater wetland. "Freshwater wetland" means freshwater swamps, marshes, bogs and similar areas which are:

A. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and

B. Not considered part of a great pond, coastal wetland, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

3. Principal structure. "Principal structure" means any building or structure in which the main use of the premises

takes place.

4. Subdivision. "Subdivision" means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term "subdivision" also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider's own use as a single-family residence that has been the subdivider's principal residence for a period of at least 5 years immediately preceding the 2nd division; or

(2) The division of the tract or parcel is otherwise exempt under this subchapter.

B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.

C. A lot of 40 or more acres must be counted as a lot, except:

(2) When a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected not to count lots of 40 or more acres as lots for the purposes of this subchapter when the parcel of land being divided is located entirely outside any shoreland area as defined in Title 38, section 435 or a municipality's shoreland zoning ordinance.

D-1. A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-2. A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-3. A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-4. A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph can not be given for consideration that is more than 1/2 the assessed value of the real estate.

D-5. A division accomplished by a gift to a municipality if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-6. A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection.

E. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.

F. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.

G. Notwithstanding the provisions of this subsection, leased dwelling units are not subject to subdivision review if

the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter.

H-1. This subchapter may not be construed to prevent a municipality from enacting an ordinance under its home rule authority that:

- (1) Expands the definition of "subdivision" to include the division of a structure for commercial or industrial use; or
- (2) Otherwise regulates land use activities.

A municipality may not enact an ordinance that expands the definition of "subdivision" except as provided in this subchapter. A municipality that has a definition of "subdivision" that conflicts with the requirements of this subsection at the time this paragraph takes effect shall comply with this subsection no later than January 1, 2006. Such a municipality must file its conflicting definition at the county registry of deeds by June 30, 2003 for the definition to remain valid for the grace period ending January 1, 2006. A filing required under this paragraph must be collected and indexed in a separate book in the registry of deeds for the county in which the municipality is located.

I. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraphs D-1 to D-6, or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

5. New structure or structures. "New structure or structures" includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this subchapter.

6. Tract or parcel of land. "Tract or parcel of land" means all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road.

7. Outstanding river segments. In accordance with Title 12, section 402, "outstanding river segments" means:

A. The Aroostook River from the Canadian border to the Masardis and T.10, R.6, W.E.L.S. town line, excluding the segment in T.9, R.5, W.E.L.S.;

B. The Carrabassett River from the Kennebec River to the Carrabassett Valley and Mt. Abram Township town line;

C. The Crooked River from its inlet into Sebago Lake to the Waterford and Albany Township town line;

D. The Damariscotta River from the Route 1 bridge in Damariscotta to the dam at Damariscotta Mills;

E. The Dennys River from the Route 1 bridge to the outlet of Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation;

F. The East Machias River, including the Maine River, from 1/4 of a mile above the Route 1 bridge to the East Machias and T.18, E.D., B.P.P. town line, from the T.19, E.D., B.P.P. and Wesley town line to the outlet of Crawford Lake, and from the No. 21 Plantation and Alexander town line to the outlet of Pocomoonshine Lake, excluding Hadley Lake, Lower Mud Pond and Upper Mud Pond;

G. The Fish River from the bridge at Fort Kent Mills to the Fort Kent and Wallagrass Plantation town line, from the T.16, R.6, W.E.L.S. and Eagle Lake town line to the Eagle Lake and Winterville Plantation town line, and from the T.14, R.6, W.E.L.S. and Portage Lake town line to the Portage Lake and T.13, R.7, W.E.L.S. town line, excluding Portage Lake;

H. The Kennebag River from its inlet into Cupsuptic Lake to the Rangeley and Lower Cupsuptic Township town line;

I. The Kennebec River from Thorns Head Narrows in North Bath to the Edwards Dam in Augusta, excluding Perkins Township, and from the Route 148 bridge in Madison to the Caratunk and The Forks Plantation town line, excluding the western shore in Concord Township, Pleasant Ridge Plantation and Carrying Place Township and excluding Wyman Lake;

J. The Machias River from the Route 1 bridge to the Northfield and T.19, M.D., B.P.P. town line;

K. The Mattawamkeag River from the Penobscot River to the Mattawamkeag and Kingman Township town line,

and from the Reed Plantation and Bancroft town line to the East Branch in Haynesville;

L. The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township town lines, excluding Beddington Lake;

M. The Penobscot River, including the Eastern Channel, from Sandy Point in Stockton Springs to the Veazie Dam and its tributary the East Branch of the Penobscot from the Penobscot River to the East Millinocket and Grindstone Township town line;

N. The Piscataquis River from the Penobscot River to the Monson and Blanchard Plantation town line;

O. The Pleasant River from the bridge in Addison to the Columbia and T.18, M.D., B.P.P. town line, and from the T.24, M.D., B.P.P. and Beddington town line to the outlet of Pleasant River Lake;

P. The Rapid River from the Magalloway Plantation and Upton town line to the outlet of Pond in the River;

Q. The Saco River from the Little Ossipee River to the New Hampshire border;

R. The St. Croix River from the Route 1 bridge in Calais to the Calais and Baring Plantation town line, from the Baring Plantation and Baileyville town line to the Baileyville and Fowler Township town line, and from the Lambert Lake Township and Vanceboro town line to the outlet of Spednik Lake, excluding Woodland Lake and Grand Falls Flowage;

S. The St. George River from the Route 1 bridge in Thomaston to the outlet of Lake St. George in Liberty, excluding White Oak Pond, Seven Tree Pond, Round Pond, Sennebec Pond, Trues Pond, Stevens Pond and Little Pond;

T. The St. John River from the Van Buren and Hamlin Plantation town line to the Fort Kent and St. John Plantation town line, and from the St. John Plantation and St. Francis town line to the Allagash and St. Francis town line;

U. The Sandy River from the Kennebec River to the Madrid and Township E town line;

V. The Sheepscot River from the railroad bridge in Wiscasset to the Halldale Road in Montville, excluding Long Pond and Sheepscot Pond, including its tributary the West Branch of the Sheepscot from its confluence with the Sheepscot River in Whitefield to the outlet of Branch Pond in China;

W. The West Branch of the Pleasant River from the East Branch in Brownville to the Brownville and Williamsburg Township town line; and

X. The West Branch of the Union River from the Route 181 bridge in Mariaville to the outlet of Great Pond in the Town of Great Pond.

§4402. Exceptions

This subchapter does not apply to:

1. Previously approved subdivisions. Proposed subdivisions approved by the planning board or the municipal officials before September 23, 1971 in accordance with laws then in effect;

2. Previously existing subdivisions. Subdivisions in actual existence on September 23, 1971 that did not require approval under prior law;

3. Previously recorded subdivisions. A subdivision, a plan of which had been legally recorded in the proper registry of deeds before September 23, 1971;

4. Airports with an approved airport layout plan. Any airport with an airport layout plan that has received final approval from the airport sponsor, the Department of Transportation and the Federal Aviation Administration; or

5. Subdivisions in existence for at least 20 years. A subdivision in violation of this subchapter that has been in existence for 20 years or more, except a subdivision:

A. That has been enjoined pursuant to section 4406;

B. For which approval was expressly denied by the municipal reviewing authority, and record of the denial was recorded in the appropriate registry of deeds;

C. For which a lot owner was denied a building permit under section 4406, and record of the denial was recorded in the appropriate registry of deeds; or

D. That has been the subject of an enforcement action or order, and record of the action or order was recorded in the

appropriate registry of deeds.

§4403. Municipal review and regulation

This section governs municipal review of proposed subdivisions.

1. Municipal reviewing authority. The municipal reviewing authority shall review all requests for subdivision approval. On all matters concerning subdivision review, the municipal reviewing authority shall maintain a permanent record of all its meetings, proceedings and correspondence.

1-A. Joint meetings. If any portion of a subdivision crosses municipal boundaries, all meetings and hearings to review the application must be held jointly by the reviewing authorities from each municipality. All meetings and hearings to review an application under section 4407 for a revision or amendment to a subdivision that crosses municipal boundaries must be held jointly by the reviewing authorities from each municipality. In addition to other review criteria, the reviewing authorities shall consider and make a finding of fact regarding the criteria described in section 4404, subsection 19.

The reviewing authorities in each municipality, upon written agreement, may waive the requirement under this subsection for any joint meeting or hearing.

2. Regulations; review procedure. The municipal reviewing authority may, after a public hearing, adopt, amend or repeal additional reasonable regulations governing subdivisions which shall control until amended, repealed or replaced by regulations adopted by the municipal legislative body. The municipal reviewing authority shall give at least 7 days' notice of this hearing.

A. The regulations may provide for a multi-stage application or review procedure consisting of no more than 3 stages:

- (1) Preapplication sketch plan;
- (2) Preliminary plan; and
- (3) Final plan.

Each stage must meet the time requirements of subsections 4 and 5.

3. Application; notice; completed application. This subsection governs the procedure to be followed after receiving an application for a proposed subdivision. [1999, c. 761, §11 (amd).]

A. When an application is received, the municipal reviewing authority shall give a dated receipt to the applicant and shall notify by mail all abutting property owners of the proposed subdivision, and the clerk and the reviewing authority of municipalities that abut or include any portion of the subdivision, specifying the location of the proposed subdivision and including a general description of the project. The municipal reviewing authority shall notify by mail a public drinking water supplier if the subdivision is within its source water protection area.

B. Within 30 days after receiving an application, the municipal reviewing authority shall notify the applicant in writing either that the application is complete or, if the application is incomplete, the specific additional material needed to complete the application.

C. After the municipal reviewing authority has determined that a complete application has been filed, it shall notify the applicant and begin its full evaluation of the proposed subdivision.

D. The municipal reviewing authority may not accept or approve final plans or final documents prepared within the meaning and intent of Title 32, chapter 121 that are not sealed and signed by the professional land surveyor under whose responsible charge they were completed, as provided in Title 32, section 13907.

4. Public hearing; notice. If the municipal reviewing authority decides to hold a public hearing on an application for subdivision approval, it shall hold the hearing within 30 days after determining it has received a complete application. The municipal reviewing authority shall have notice of the date, time and place of the hearing:

A. Given to the applicant; and

B. Published, at least 2 times, in a newspaper having general circulation in the municipality in which the subdivision is proposed to be located. The date of the first publication must be at least 7 days before the hearing.

5. Decision; time limits. The municipal reviewing authority shall, within 30 days of a public hearing or, if no hearing is held, within 60 days of determining it has received a complete application or within any other time limit that is

otherwise mutually agreed to, issue an order:

- A. Denying approval of the proposed subdivision;
- B. Granting approval of the proposed subdivision; or
- C. Granting approval upon any terms and conditions that it considers advisable to:
 - (1) Satisfy the criteria listed in section 4404;
 - (2) Satisfy any other regulations adopted by the reviewing authority; and
 - (3) Protect and preserve the public's health, safety and general welfare.

6. Burden of proof; findings of fact. In all instances, the burden of proof is upon the person proposing the subdivision. In issuing its decision, the reviewing authority shall make findings of fact establishing that the proposed subdivision does or does not meet the criteria described in subsection 5.

7. Conditioned on variance. If the initial approval or any subsequent amendment of a subdivision is based in part on the granting of a variance, the subdivider must comply with section 4406, subsection 1, paragraph B.

§4404. Review criteria

When adopting any subdivision regulations and when reviewing any subdivision for approval, the municipal reviewing authority shall consider the following criteria and, before granting approval, must determine that:

1. Pollution. The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:

- A. The elevation of the land above sea level and its relation to the flood plains;
- B. The nature of soils and subsoils and their ability to adequately support waste disposal;
- C. The slope of the land and its effect on effluents;
- D. The availability of streams for disposal of effluents; and
- E. The applicable state and local health and water resource rules and regulations;

2. Sufficient water. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;

3. Municipal water supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;

4. Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

5. Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of an urban compact municipality as defined by Title 23, section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section;

6. Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;

7. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;

8. Aesthetic, cultural and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

9. Conformity with local ordinances and plans. The proposed subdivision conforms with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;

10. Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section;

11. Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

A. When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet.

(1) To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended to the shore.

(2) The frontage and set-back provisions of this paragraph do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, chapter 3, subchapter I, article 2-B, or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of section 4401, subsection 1, on September 23, 1983;

12. Ground water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;

13. Flood areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;

14. Freshwater wetlands. All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;

15. River, stream or brook. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9;

16. Storm water. The proposed subdivision will provide for adequate storm water management;

17. Spaghetti-lots prohibited. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;

18. Lake phosphorus concentration. The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision;

19. Impact on adjoining municipality. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located; and

20. Lands subject to liquidation harvesting. Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the municipal reviewing authority must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. A municipal reviewing authority may request technical assistance from the Department of Conservation, Bureau of Forestry to determine whether a rule violation has occurred, or the municipal reviewing authority may accept a determination certified by a forester licensed pursuant to Title 32, chapter 76. If a municipal reviewing authority requests technical assistance from the bureau, the bureau shall respond within 5 working days regarding its ability to provide assistance. If the bureau agrees to provide assistance, it shall make a finding and determination as to whether a rule violation has occurred. The bureau shall provide a written copy of its

finding and determination to the municipal reviewing authority within 30 days of receipt of the municipal reviewing authority's request. If the bureau notifies a municipal reviewing authority that the bureau will not provide assistance, the municipal reviewing authority may require a subdivision applicant to provide a determination certified by a licensed forester.

For the purposes of this subsection, "liquidation harvesting" has the same meaning as in Title 12, section 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or a group of persons in common or joint ownership. This subsection takes effect on the effective date of rules adopted pursuant to Title 12, section 8869, subsection 14.

§4405. Access to direct sunlight

The municipal reviewing authority may, to protect and ensure access to direct sunlight for solar energy systems, prohibit, restrict or control development through subdivision regulations. The regulations may call for subdivision development plans containing restrictive covenants, height restrictions, side yard and set-back requirements or other permissible forms of land use controls.

§4406. Enforcement; prohibited activities

The Attorney General, the municipality or the planning board of any municipality may institute proceedings to enjoin a violation of this subchapter. [1989, c. 104, Pt. A, §45 and Pt. C, §10 (new).]

1. Sales or other conveyances. No person may sell, lease, develop, build upon or convey for consideration, or offer or agree to sell, lease, develop, build upon or convey for consideration any land or dwelling unit in a subdivision that has not been approved by the municipal reviewing authority of the municipality where the subdivision is located and approved under Title 38, chapter 3, subchapter I, article 6, where applicable, and subsequently recorded in the proper registry of deeds.

A. No register of deeds may record any subdivision plat or plan that has not been approved under this subchapter. Approval for the purpose of recording must appear in writing on the plat or plan. All subdivision plats and plans required by this subchapter must contain the name and address of the person under whose responsibility the subdivision plat or plan was prepared.

B. Whenever the initial approval or any subsequent amendment of a subdivision is based in part on the granting of a variance from any applicable subdivision approval standard, that fact must be expressly noted on the face of the subdivision plan to be recorded in the registry of deeds.

(1) In the case of an amendment, if no amended plan is to be recorded, a certificate must be prepared in recordable form and recorded in the registry of deeds. This certificate must:

- (a) Indicate the name of the current property owner;
- (b) Identify the property by reference to the last recorded deed in its chain of title; and
- (c) Indicate the fact that a variance, including any conditions on the variance, has been granted and the date of the granting.

(2) The variance is not valid until recorded as provided in this paragraph. Recording must occur within 90 days of the final subdivision approval or approval under Title 38, chapter 3, subchapter I, article 6, where applicable, whichever date is later, or the variance is void.

B-1. Whenever the subdivision is exempt from Title 38, chapter 3, subchapter I, article 6, because of the operation of Title 38, section 488, subsection 5, that fact must be expressly noted on the face of the subdivision plan to be recorded in the registry of deeds. The developable land, as defined in Title 38, section 488, subsection 5, must be indicated on the plan. The person submitting the plan for recording shall prepare a sworn certificate in recordable form and record it in the registry of deeds. This certificate must:

- (1) Indicate the name of the current property owner;
- (2) Identify the property by reference to the last recorded deed in its chain of title and by reference to the subdivision plan;
- (3) Indicate that an exemption from Title 38, chapter 3, subchapter I, article 6, has been exercised;
- (4) Indicate that the requirements of Title 38, section 488, subsection 5, have been and will be satisfied; and
- (5) Indicate the date of notification of the Department of Environmental Protection under Title 38, section 488,

subsection 5.

The exemption is not valid until recorded as provided in this paragraph. Recording must occur within 90 days of the final subdivision approval under this subchapter or the exemption is void.

C. A building inspector may not issue any permit for a building or use within a land subdivision unless the subdivision has been approved under this subchapter and under Title 38, chapter 3, subchapter I, article 6, where applicable.

D. Any person who sells, leases, develops, builds upon, or conveys for consideration, offers or agrees to sell, lease, develop, build upon or convey for consideration any land or dwelling unit in a subdivision that has not been approved under this subchapter and under Title 38, chapter 3, subchapter I, article 6, where applicable, shall be penalized in accordance with section 4452.

E. Any person who, after receiving approval from the municipal reviewing authority or approval under Title 38, chapter 3, subchapter I, article 6 and recording the plan at the registry of deeds, constructs or develops the subdivision or transfers any lot in a manner other than depicted on the approved plans or amendments or in violation of any condition imposed by the municipal reviewing authority or the Department of Environmental Protection, when applicable, must be penalized in accordance with section 4452.

F. Any person who sells, leases or conveys for consideration any land or dwelling unit in a subdivision approved under this subchapter and exempt from Title 38, chapter 3, subchapter I, article 6, because of the operation of Title 38, section 488, subsection 5, shall include in the instrument of sale, lease or conveyance a covenant to the transferee that all of the requirements of Title 38, section 488, subsection 5, have been and will be satisfied.

2. Permanent marker required. No person may sell or convey any land in an approved subdivision unless at least one permanent marker is set at one lot corner of the lot sold or conveyed. The term "permanent marker" includes, but is not limited to, the following:

- A. A granite monument;
- B. A concrete monument;
- C. An iron pin; or
- D. A drill hole in ledge.

3. Utility installation. A public utility, water district, sanitary district or any utility company of any kind may not install services to any lot or dwelling unit in a subdivision, unless written authorization attesting to the validity and currency of all local permits required under this chapter has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officers and the utility, except that if a public utility, water district, sanitary district or utility company of any kind has installed services to a lot or dwelling unit in a subdivision in accordance with this subsection, a subsequent public utility, water district, sanitary district or utility company of any kind may install services to the lot or dwelling unit in a subdivision without first receiving written authorization pursuant to this section.

4. Permit display. A person issued a permit pursuant to this subchapter in a great pond watershed shall have a copy of the permit on site while work authorized by the permit is being conducted.

§4407. Revisions to existing plat or plan

Any application for subdivision approval which constitutes a revision or amendment to a subdivision plan which has been previously approved shall indicate that fact on the application and shall identify the original subdivision plan being revised or amended. In reviewing such an application, the municipal reviewing authority shall make findings of fact establishing that the proposed revisions do or do not meet the criteria of section 4404.

1. Recording. If a subdivision plat or plan is presented for recording to a register of deeds and that plat or plan is a revision or amendment to an existing plat or plan, the register shall:

- A. Indicate on the index for the original plat or plan that it has been superseded by another plat or plan;
- B. Reference the book and page or cabinet and sheet on which the new plat or plan is recorded; and
- C. Ensure that the book and page or cabinet and sheet on which the original plat or plan is recorded is referenced on the new plat or plan.

Subchapter 5: ENFORCEMENT OF LAND USE REGULATIONS

§4451. Training and certification for code enforcement officers

1. Certification required; exceptions. Beginning January 1, 1993, a municipality may not employ any individual to perform the duties of a code enforcement officer who is not certified by the office, except that:

- A. An individual other than an individual appointed as a plumbing inspector has 12 months after beginning employment to be trained and certified as provided in this section;
- B. Whether or not any extension is available under paragraph A, the office may waive this requirement for up to one year if the certification requirements cannot be met without imposing a hardship on the municipality employing the individual; and
- C. An individual may be temporarily authorized in writing by the Department of Health and Human Services, Division of Health Engineering to be employed as a plumbing inspector for a period not to exceed 12 months.

A person employed by a municipality or municipalities as a code enforcement officer for at least 3 years prior to January 1, 1990 is deemed certified under this section and, 5 years after the effective date of this paragraph, is subject to the recertification requirements of subsection 6.

2. Penalty. Any municipality that violates this section commits a civil violation for which a forfeiture of not more than \$100 may be adjudged. Each day in violation constitutes a separate offense.

2-A. Code enforcement officer; definition and duties. As used in this subchapter, "code enforcement officer" means a person certified under this section and employed by a municipality to enforce all applicable laws and ordinances in the following areas:

- A. Shoreland zoning under Title 38, chapter 3, subchapter I, article 2-B;
- B. Comprehensive planning and land use under Part 2, Subpart VI-A;
- C. Internal plumbing under chapter 185, subchapter III;
- D. Subsurface wastewater disposal under chapter 185, subchapter III; and
- E. Building standards under chapter 141; chapter 185, subchapter I; and Title 25, chapters 313 and 331.

3. Training and certification of code enforcement officers. In cooperation with the Maine Community College System, the Department of Environmental Protection and the Department of Health and Human Services, the office shall establish a continuing education program for individuals engaged in code enforcement. This program must provide basic and advanced training in the technical and legal aspects of code enforcement necessary for certification.

4. Examination. The office shall conduct at least one examination each year to examine candidates for certification at a time and place designated by it. The office may conduct additional examinations to carry out the purposes of this subchapter.

5. Certification standards. The office shall establish by rule the qualifications, conditions and licensing standards and procedures for the certification and recertification of individuals as code enforcement officers. A code enforcement officer need only be certified in the areas of actual job responsibilities. The rules established under this subsection must identify standards for each of the areas of training under subsection 2-A, in addition to general standards that apply to all code enforcement officers.

6. Certification; terms; revocation. The office shall certify individuals as to their competency to successfully enforce ordinances and other land use regulations and permits granted under those ordinances and regulations and shall issue certificates attesting to the competency of those individuals to act as code enforcement officers. Certificates are valid for 5 years unless revoked by the District Court. An examination is not required for recertification of code enforcement officers. The office shall recertify a code enforcement officer if the code enforcement officer successfully completes at least 12 hours of approved training in each area of job responsibility during the 5-year certification period.

A. The District Court may revoke the certificate of a code enforcement officer, in accordance with Title 4, chapter 5, when it finds that:

- (1) The code enforcement officer has practiced fraud or deception;
- (2) Reasonable care, judgment or the application of a duly trained and knowledgeable code enforcement

officer's ability was not used in the performance of the duties of the office; or

(3) The code enforcement officer is incompetent or unable to perform properly the duties of the office.

B. Code enforcement officers whose certificates are invalidated under this subsection may be issued new certificates provided that they are newly certified as provided in this section.

7. Other professions unaffected. This subchapter may not be construed to affect or prevent the practice of any other profession.

§4452. Enforcement of land use laws and ordinances

1. Enforcement. A municipal official, such as a municipal code enforcement officer, local plumbing inspector or building inspector, who is designated by ordinance or law with the responsibility to enforce a particular law or ordinance set forth in subsection 5, 6 or 7, may:

A. Enter any property at reasonable hours or enter any building with the consent of the owner, occupant or agent to inspect the property or building for compliance with the laws or ordinances set forth in subsection 5. A municipal official's entry onto property under this paragraph is not a trespass;

B. Issue a summons to any person who violates a law or ordinance, which the official is authorized to enforce; and

C. When specifically authorized by the municipal officers, represent the municipality in District Court in the prosecution of alleged violations of ordinances or laws, which the official is authorized to enforce.

2. Liability for violations. Any person, including, but not limited to, a landowner, the landowner's agent or a contractor, who violates any of the laws or ordinances set forth in subsection 5 or 6 is liable for the penalties set forth in subsection 3.

3. Civil penalties. The following provisions apply to violations of the laws and ordinances set forth in subsection 5. Except for paragraph H, monetary penalties may be assessed on a per-day basis and are civil penalties. [1999, c. 370, §1 (amd).]

A. The minimum penalty for starting construction or undertaking a land use activity without a required permit is \$100, and the maximum penalty is \$2,500.

B. The minimum penalty for a specific violation is \$100, and the maximum penalty is \$2,500.

B-1. Notwithstanding paragraph B, the maximum penalty is \$5,000 for any violation of a law or an ordinance set forth in subsection 5, paragraph Q, if the violation occurs within an area zoned for resource protection.

C. The violator may be ordered to correct or abate the violations. When the court finds that the violation was willful, the violator shall be ordered to correct or abate the violation unless the abatement or correction results in:

- (1) A threat or hazard to public health or safety;
- (2) Substantial environmental damage; or
- (3) A substantial injustice.

C-1. Notwithstanding paragraph C, for violations of the laws and ordinances set forth in subsection 5, paragraph Q, the violator shall be ordered to correct or mitigate the violation unless the correction or mitigation results in:

- (1) A threat or hazard to public health or safety;
- (2) Substantial environmental damage; or
- (3) A substantial injustice.

D. If the municipality is the prevailing party, the municipality must be awarded reasonable attorney fees, expert witness fees and costs, unless the court finds that special circumstances make the award of these fees and costs unjust. If the defendant is the prevailing party, the defendant may be awarded reasonable attorney fees, expert witness fees and costs as provided by court rule.

E. In setting a penalty, the court shall consider, but is not limited to, the following:

- (1) Prior violations by the same party;
- (2) The degree of environmental damage that cannot be abated or corrected;

(3) The extent to which the violation continued following a municipal order to stop; and

(4) The extent to which the municipality contributed to the violation by providing the violator with incorrect information or by failing to take timely action.

F. The maximum penalty may exceed \$2,500, but may not exceed \$25,000, when it is shown that there has been a previous conviction of the same party within the past 2 years for a violation of the same law or ordinance.

G. The penalties for violations of a septage land disposal or storage site permit issued by the Department of Environmental Protection under Title 38, chapter 13, subchapter 1, are as prescribed in Title 38, section 349.

H. If the economic benefit resulting from the violation exceeds the applicable penalties under this subsection, the maximum civil penalties may be increased. The maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. Economic benefit includes, but is not limited to, the costs avoided or enhanced value accrued at the time of the violation as a result of the violator's noncompliance with the applicable legal requirements.

4. Proceedings brought for benefit of municipality. All proceedings arising under locally administered laws and ordinances shall be brought in the name of the municipality. All fines resulting from those proceedings shall be paid to the municipality.

5. Application. This section applies to the enforcement of land use laws and ordinances or rules which are administered and enforced primarily at the local level, including:

A. The plumbing and subsurface waste water disposal rules adopted by the Department of Health and Human Services under Title 22, section 42, including the land area of the State which is subject to the jurisdiction of the Maine Land Use Regulation Commission;

B. Laws pertaining to public water supplies, Title 22, sections 2642, 2647 and 2648;

C. Local ordinances adopted pursuant to Title 22, section 2642;

D. Laws administered by local health officers pursuant to Title 22, chapters 153 and 263;

E. Laws pertaining to fire prevention and protection, which require enforcement by local officers pursuant to Title 25, chapter 313;

F. Laws pertaining to the construction of public buildings for the physically disabled pursuant to Title 25, chapter 331;

G. Local land use ordinances adopted pursuant to section 3001;

H. Local building codes adopted pursuant to sections 3001 and 3007;

I. Local housing codes adopted pursuant to sections 3001 and 3007;

J. Laws pertaining to junkyards, automobile graveyards and automobile recycling businesses and local ordinances regarding junkyards, automobile graveyards and automobile recycling businesses, pursuant to chapter 183, subchapter 1 and Title 38, section 1665-A, subsection 3.

K. Local ordinances regarding electrical installations pursuant to chapter 185, subchapter II;

L. Local ordinances regarding regulation and inspection of plumbing pursuant to chapter 185, subchapter III;

M. Local ordinances regarding malfunctioning subsurface waste water disposal systems pursuant to section 3428;

N. The subdivision law and local subdivision ordinances adopted pursuant to section 3001 and subdivision regulations adopted pursuant to section 4403;

O. Local zoning ordinances adopted pursuant to section 3001 and in accordance with section 4352;

P. Wastewater discharge licenses issued pursuant to Title 38, section 353-B;

Q. Shoreland zoning ordinances adopted pursuant to Title 38, sections 435 to 447, including those that were state-imposed;

R. The laws pertaining to harbors in Title 38, chapter 1, subchapter 1, local harbor ordinances adopted in accordance with Title 38, section 7 and regulations adopted by municipal officers pursuant to Title 38, section 2; and

S. Local ordinances and ordinance provisions regarding storm water, including, but not limited to, ordinances and ordinance provisions regulating nonstorm water discharges, construction site runoff and postconstruction storm water management, enacted as required by the federal Clean Water Act and federal regulations and by state permits and rules.

6. Septage and sludge permits issued by the Department of Environmental Protection. A municipality, after notifying the Department of Environmental Protection, may enforce the terms and conditions of a septage land disposal or storage site permit or a sludge land application or storage site permit issued by the Department of Environmental Protection pursuant to Title 38, chapter 13, subchapter 1.

7. Natural resources protection laws. A code enforcement officer, authorized by a municipality to represent that municipality in District Court and certified by the State Planning Office under section 4453 as familiar with court procedures, may enforce the provisions of the natural resources protection laws, Title 38, chapter 3, subchapter I, article 5-A and Title 38, section 420-C, by instituting injunctive proceedings or by seeking civil penalties in accordance with Title 38, section 349, subsection 2.

§4453. Certification for representation in court

The office shall establish certification standards and a program to certify familiarity with court procedures for the following individuals:

1. Code enforcement officers. Code enforcement officers as set forth in sections 4451 and 4452 and Title 38, section 441;

2. Plumbing inspectors. Plumbing inspectors as set forth in sections 4221 and 4451;

3. Department of Environmental Protection. Department of Environmental Protection employees as set forth in Title 38, section 342, subsection 7;

4. Maine Land Use Regulation Commission. Maine Land Use Regulation Commission employees as set forth in Title 12, section 685-C, subsection 9; and

5. Humane agents and state veterinarians. Humane agents and state veterinarians as set forth in Title 7, section 3909, subsection 2.

Subchapter 6: MUNICIPAL REGULATION OF WATER LEVELS AND MINIMUM FLOWS

§4454. Municipal regulation

Pursuant to the provisions of this subchapter, a municipality may adopt an ordinance under its home rule authority to regulate water level regimes and minimum flow requirements for impounded bodies of water and dams that are entirely within its corporate boundary.

§4455. Registration for authority to regulate

Prior to regulating a water level regime or minimum flow on any impounded body of water, a municipality shall adopt an ordinance and submit that ordinance to the Commissioner of Environmental Protection for review and approval. An ordinance adopted under this section must include:

1. Substance of state law. All substantive provisions of Title 38, chapter 5, subchapter 1, article 3-A. The ordinance may not allow a municipality to establish a water level regime or minimum flow requirements for any dam listed in Title 38, section 840, subsection 1, paragraphs A to D; and

2. Commissioner as petitioner. Provisions allowing the Commissioner of Environmental Protection and any municipality downstream of the impoundment to petition the municipality for an adjudicatory hearing.

An ordinance adopted under this subchapter may establish a fee for adjudicatory hearings conducted by the municipality.

§4456. Interlocal agreements

Two or more municipalities may enter into an interlocal agreement under this section to regulate water level regimes and minimum flow requirements for impounded bodies of water and dams that are entirely within the corporate boundaries of those municipalities only if each municipality has adopted an ordinance that has been approved by the Commissioner of Environmental Protection pursuant to this subchapter.

§4457. Assumption of authority

Immediately upon the commissioner's approval of an ordinance submitted under this subchapter, all powers and duties of the Commissioner of Environmental Protection set forth in Title 38, chapter 5, subchapter 1, article 3-A, vest in that municipality.

APPENDIX B

SUGGESTED LANGUAGE FOR ADMINISTRATIVE PORTIONS OF A ZONING ORDINANCE

APPENDIX C

ZONING MAPS AND DISTRICT DESCRIPTIONS